19/47

File No. O Rents/47

Legal **DEPARTMENT**

A. **BRANCH**

Subject: Opinions under the Bombay Rents, Hotel Rates and Lodging House Rates (contrd) Act 1944

P.31/C

File No. O Rents/47

Std. Sectt. Slip 24 B e.

221-A

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Office of the R.L.A.

Para. 4 of G.D. office not at pages 31-33.- Under the proviso to section 9(1) of Bombay rents, Hotel Rates and Lodging House Rates (Control) Act, 1944 a certificate can be obtained from the Controller by a landlord if the premises are reasonably and bonafide required for his own occupation or for the occupation of any person for whose benefit the premises are held or for any other cause which may be deemed satisfactory by the Controller. Although the words " reasonably and bonafide required for his own occupation" Prima facie suggest "personal residence," still when read with the definition of premises section4(3) it appears that " occupation" need not necessarily limited to personal residence but may extend to cover occupation for any purpose other than storage. Further, the words "for any other cause which may be deemed satisfactory by the Controller" are very wide and the use of premises for a laboratory may fall thereunder if such purpose is deemed satisfactory by the Controller. The view taken by G.D. on this point is not correct.

Para. 5of G.D. office note.-The Collector's action in reviewing his own order without notice to Dr. Kirtane is no doubt illegal (see clause (a)of rule 4(2) of O.47C.P.C.). But it is doubtful whether the Collector can again review his order already passed on review of his first order and it is still more doubtful whether it would be desirable for Government to advise the Collector to quash his decision and start a fresh review after following the correct procedure, particularly when the matter appears to be pending before the Court (see the Collr's letter dated 29-1-1947 page 27 ante). The Rent Controller and the Collector appear to be quasi judicial authorities and the decision of the Collector and subject only to such decision the orders of the Controller are final. Consequently Government may

bring to the Collector's notice that his review order is open to objection for want of notice to Dr. Kirtane and leave it to Dr. Kirtane to decide whether the Collector's order should be challenged in a Court of Law.

Sd/- D.V. Vyas.

Remembrancer of Legal Affairs.

U.O.R. to G.D. No. 2198

Dated the 13th March 1947.

V.M.D./15-5
4c.

Office of the R.L.A.

Paragraph 2 of G.D. Office note :-Reading together the provisions of sections 5 and 12 (1) of the Bombay Rents, Hotel Rates and Lodging House Rates (Control) Act, 1944, it appears that though the increase of rent is not made penal the landlord's right to increase it is circumscribed by the two restrictions: (1) that the increased rate is irrecoverable notwithstanding any agreement to the contrary and (2) that even if recovered, the tenant can claim recoupment. The statement in G.D. office note that "he (landlord) is prevented from recovering the excess if the tenant is not agreeable " implies that the landlord can recover the excess if the tenant is willing. This implication is not quite correct. Even if the tenant agrees to pay the increased rent and actually pays it, it would still be open to him to recover the excess from the landlord under section12(1)

Para. 3 of G.D. office note .- Sub-section(2) of section provides:-

> "Where,as a result of any alteration of the terms of the tenancy the terms on which any premises are held are not on the whole less favourable to the tenant than the previous terms, the rent shall not be deemed to be increased for the purposes of this part, whether the sum payable as rent is increased or not".

It is clear from this that the increase in rent would be permissible if fresh amenities areqq provided, and the increase in rent bears a reasonable proportion to the cost of such amenities. If as stated by the General Department a block of three rooms is let at present for Rs40/- and if the landlord provides say an additional bath room or other amenity it would be open to the landlord to increase the rent proportionately. If the increase is disputed by the

tenant as unreasonable, it appears that the Rent Controller can fix it under section 13 (b) of the Act.

It may be added that provision corresponding to section 6 of the Bombay Rent Restriction Act, 1939, has now been inserted in L.A.Bill No 18 of ~~1947~~ 1947 .

Sd/- P.M.Lad.
20-5

Remembrancer of Legal Affairs.

U.R. to Health & Local Govt. Deptt., No. 5151 dated the 20th May 1947.

V.M.D. /15-5
4c.

The question referred to the R.L.A. for consideration is whether under section 38 of the Bombay Rents, Hotel Rate and Lodging House Rates (Control) Act, 1944 the Controller can review his order fixing the "fair rates" with a view to increasing those rates on the ground that there has since been a general increase in the prices of commodities.

Section 30 of the Bombay Rents, Hotel Rates and Lodging House Rates (Control) Act, 1944 provides for the determination of the fair rate to be charged for board, lodging and any other service provided in the hotel or lodging house. Under section 31 in determining the fair rate under section 30, the Controller shall have due regar to the prevailing rates of charges for the same or similar accommodation, board and service during the twelve months immediately preceding the 1st September 1940 and to any general increase in the cost of living after that date. Under section 35(3) the decision of the Collector subject only to such decision the order of the Controller fixing the fair rates shall be final. Section 38 provide that the Controller or the Collector may review any order passed by him under any part of this Act, and the provisi of Order 47 in the First Schedule to the Code of Civil Procedure, 1908 shall so far as may be apply to such revi It is clear from this provision that the provision of Order 47 C.P.C. will govern the review power of the Collector and the Controller. Under Order 47 C.P.C. orde can be reviewed in any of the following cases:-

I. On the ground of discovery of new and important matter or evidence which after the exercise of due diligence, was not within the knowledge of the party or could not be produced by him at the time when the order was made; or

II. On account of some mistake or error on the face of the record; or

III. For any other sufficient reason.

Although the words "for any other sufficient reason" are very wide, still the ~~Se~~ general principle is that "the ground of review must be something which existed at the date of the order and the rule does not authorise the review of an order which was right when it was made, on the ground of x happening of some subsequent events " (See Kotaghiri Venkat v. Vellanki Venkatarama 24 Mad. 1). In the present case the hotel keepers do not dispute the rates fixed as unfair at the time when they were fixed. Their contention is that those rates must now be revised in view of the subsequent rise in prices of commodities. In other words they ask for review of the orders fixing the rates " on the ground of happening of some subsequent events." Consequently it would not be competent for the Controller to review his orders for the purpose under section 38. The Act requiress to be suitably amended if it is necessary to empower the Controller to revise the rates from time to time.

Sd/- D.V.VyasVyas.
Remembrancer of Legal Affairs.

U.R.to G.D., No. 2038 , dated the 28th February 1947.

V.M.D./15-5
4e.

Office of the R.L.A.

Statement of the Case.

In the year 1944, in pursuance of the powers conferred upon by section 30 of the Bombay Rents, Hotel Rates and Lodging House Rates (Control) Act, 1944, the Controller had fixed "fair rates" in respect of several hotels and lodging houses taking into consideration the circumstances then prevailing. In the year 1946, due to rise in the prices of commodities, the owners of the Hotels and Lodging Houses found the rates fixed by the Controller inequitable and therefore they approached the Controller for a review of his orders under section 38 of the Act. In rejecting theapplicating the app applications, the Controller observed that he had no power to increase the rates on account of circumstances which have changed since his order was made and which were not existing at the time when the order was made. Being aggrieved by the Controller's order of rejection, the owners approached Government through the Hotel Owner's Association and on a reference to the Remembrancer of Legal Affairs, he for the reasons given in his opinion No.2038, dated the 28th February 1947 held that it would not be competent to the Controller to review his orders under sec.38 in the circumstances stated by the petitioners and that the Act requires to be suitably amended to empower the Controller to revise the rates from time to time.

The H.M.(H.S.G.) however desires to have the opinion of the Advocate General in the matter. The Advocate General is therefore requested to favour Government with his opinion. This may kindly be treated as immediate.

Sd/- P.M.Lad.
22-4
Remembrancer of Legal Affairs.

U.R. to the Advocate General, Bombay, No.4088 dated the 22nd April 1947.

Advocate General's Chambers,
High Court,
Bombay, 26th April 1947.

U.R. to the Advocate General, Bombay, No. 4033

Dated the 22nd of April 1947.

OPINION.

I agree with the R.L.A. There seems to be a lacuna in the Act. There is no provision for the fixing of rates from time to time and consequently once fixed whether by the Controller or on appeal by the Collector, they cannot be changed.

Section 38 provides for a review by either the Controller or the Collector of their respective orders. But it is also provided that the provisions of Order 47 of the Code of Civil Procedure shall apply as far as may be to such review. That Order limits the grounds upon which either of the Authorities can review a decision:-

1) on the ground of discovery of new evidence which existed at the date of the Order but could not with due diligence have been known;

2) on the ground of apparent error on the face of the proceedings and

3) for any other sufficient cause.

The phrase "sufficient cause" has been in the case of Chajjuram's case- a decision of the Privy Council-49 Indian Appeals- p. 144- interpreted as covering grounds of the same kind or at least analogical to the first two.

The change of circumstances subsequent to the fixation of rates which might justify the rates being changed and revised does not fall within any of the three grounds. It is a clear case for an amendment of the Act so as to supply a very necessary provision.

Sd/-
ADVOCATE GENERAL.

Office of the R.L.A.

A copy of the opinion of the Advocate General Bombay, obtained in the matter is sent herewith.

Sd/- P.M.Lad.

R.L.A.

U.O. to H.W.L.G. Deptt. No 4503, dated 2-5-1947.

V.M.D./15-5
4c.

Under section 14(2) of the Bombay Rents, Hotel Rates and Lodging House Rates (Control) Act,1944,i is open to the Collector to make such further inqui as he thinks fit either personally or through the Controller.An inquiry made by the Collector through his subordinates would not be deemed an inquiry made by the Collector personally. Consequently the view taken by the Collector in the present case that there is nothing which precludes him from making enquiries through his subordinates to verify the statements made by either party to the appeal is not correct.

The Collector however states in his report that he was not misled by the report made by his subordinate. But the report was part of the record which the Collector read before deciding the appeal. Evidently the report must have influenced his judgment Consequently the inquiry made by the Collector through his subordinate amounts to a material irregularity which though expressly brought to the notice of the Collector in the review application was not set right by the Collector. Since the review order passed by the Collector is final, Government is helpless in the matter.

Sd/- D.V. Vyas.
Remembrancer of Legal Affairs.

U.R. to U.D., No. 2701 , dated the 19th March 1947.

V.M.D./15-5
4c.

Submitted after issue with an index card for approval. File in O. Rents Hotel Rates /47.

Sd/- 31-5

31-5

Office of the R.L.A.

The view taken by Deputy Secretary, Revenue Department, is correct. The premises having been already derequisitioned, Government will have no locus standi and cannot interfere in the matter. Mr. Sinha who has been accepted as a tenant will be entitled to the protection of the Bombay Rents, Hotel Rates and Lodging House Rates (Control) Act, 1944.

Sd/- P.M.Lad.
4-6-47
Remembrancer of Legal Affairs.

U.R.to R.D., No. 5847 dated the 4th ~~x~~ June 1947.

Submitted after issue (Index card does not appear necessary)
File in O Bombay Rents /47.

Sd/- 10-6

V.U.D./15-5
4c.

Office of the R.L.A.

What the Controller has determined in this case on both occasions is not the "fair rate", though he describes it as such in his orders; he has in fact determined in each instance the actual charges payable by Miss Pavie. It is noteworthy that he did not find the charge (by which he means the rate) of Rs 200 per mensem excessive. A careful reading of sections 29to 34 of the Bombay Rents, Hotel Rates and Lodging House Rates (Control) Act, 1944 shows that a "fair rate" or a "fair rate of charges" is throughout contrasted with "charges" Rate is the amount of payment forming the basis of calculation; and in this context it cannot be confused with the actual amount payable in any particular circumstances. The Controller's orders are, therefore, of doubtful validity.

2. Even assuming their validity and accepting the Controller's authority to declare Mr. Whalley's liability to refund in terms of section 32(1) (c), there is no provision in the Act whereby the Controller can enforce the liability against him. There is no scope in this case for adjustment either. The only method of securing the refund would be by instituting a suit; and in view of what has been said in paragraph 1 above, the prospects of success are rather doubtful.

3. Moreover, it would seem that the Consul cannot be treated as the "recognized agent" of Miss Pavie for the purpose of maintaining a suit as required by the Code of Civil Prosedure. Under the authority of the executor , and in discharge of his function of

protecting his ~~xxxx~~ nationals, he certainly has power to collect the money direct from Mr. Whalley if that gentleman be agreeable to make the refund.

4. Looking to sequence of events, it is impossible ~~to~~ to hold that Mr. Whelley charged any amount in excess of the fair rate in contravention of sub-section(1) of section 32; and a prosecution cannot, therefore, be sustained against him.

Sd/- P.M.Lad.
Remembrancer of Legal Affairs.

U.R. to G.D. No.4275 dated the 28th April 1947.

Submitted after issue

2. File in O. Rents Hotel Rates /47

Sd/-
6-6

V.M.D./15-5
4c.

Office of the R.L.A.

The View taken by R.D. that section 19 of the Defence of India Act has no application to the premises which were directed to be let out under clause (bb) of rule 81 (2) of the Defence of India Rules is correct. It appears that the District Magistrate, Belgaum fixed the rent of the premises in the present case under clause (bb)(i) of rule 81(2) of the Defence of India Rules; and those Rules expired on 1-10-1946. it is difficult to hold that the District Magistrate's Order fixing the rent was saved by section 1(4) of the Defence of India Act. There is however one aspect which requires to be considered in this connection. The direction issued by the District Magistrate to the landlord under clause (bb) of rule 81(2) to let the premises to Dr. Shaikh would create the relationship of a landlord, and tenant which after 1-10-1946 could be terminated after one m month's notice. But it could not be so terminated because Dr. Shaikh became in the meanwhile entitled to the protection of the Bombay Rents Hotel Rates and Lodging House Rates (Control) Act, 1944. If Dr. Shaikh could seek the protection of this Act he should in fairness be liable to pay the standard rent thereunder. Consequently Dr. Shaikh ~~xxx~~ should be asked to pay the rent till 1-10-1946. The rent from 18-1-1947, when the Bombay Rents, Hotel Rates and Lodging House Rates (Control) Act, 1944, was brought into force in the Cantonment of Belgaum, may be got fixed as the standard rent by the Rent Controller, and paid accordingly. The same standard rent may in fairness be made applicable also to short interval between 1-10-1946 and 18-1-1947 during which the rent fixed by the Collector may not be operative.

Sd/- P.M.Lad.
13-6
Remembrancer of Legal Affairs.

U.R. to R.D. No 6169 Dated the 14th June 1947.

Submitted after issue

File in O Bombay Rents/47

(Index card does not appear necessary)

Paper 11-13 may be destroyed.

Sd/-
16-6

Office of the R.L.A.

Seen and returned.

There is no legal objection to Government subletting the premises as proposed provided the lea does not prohibit such subletting.

Sd/- D.V.Vyas.
Remembrancer of legal Affairs.

U.R.to R.D, , No 6951 dated the 7th July 1947.

Submitted after issue

File in O Bombay Rents

Sd/- ~~D.V~~
9-9

V.M.D./15-5
4c.

Office of the R.L.A.

The Collector's order passed in appeal setting aside the order of the Rent R Controller as ultra vires is illegal In passing that order the Collector was influenced by the instructions issued by R.D. under a wrong impression that th premises being requisitioned the compensation was to be fixed under section 19(1) of the Defence of India Act. In fact the premises were not requisitioned but were directed to be let and consequently the proceedings taken by the Rent Controller for determining the standard rent were valid. Ir the circumstances this appears to be a fit case for the Collector to review his order in exercise of powers vested under section 38 of the Bombay Rents Hotel Rates and Lodging House Rates (Control) Act, 1944. Sub rule 1 of Order XLVII Civil Procedure Code which applies to such review requires that an application should be made by the aggrieved party. The Military Authorities to whom the premises were ordered to be let may be asked to apply to the Collector for a review of his order on the ground that the premises were directed to be let and were not requesitioned as assumed by the Collector.

The view taken by the Health and Local Government Department that "the appeal filed by the landlord against the Rent Controller's Order must be deemed to be still holding the field and the Collector's action in setting aside Rent Controller's Order does not end the matter until the Collector has himself passed an order fixing the rent" is not correct since the Rent Controller's order has been set aside by the Collector in appeal that order would cease to

be operative unless and until the Collector reviews his order and passes a lawful order either confirming or modifying it after due notice to bothx the parties.

Sd/- D.V.Vyas.

Remembrancer of Legal Affairs.

U.R. to Health and Local Government Department, No 7399 dated the 18th July 1947.

K.

V.M.D./16-8
4c.

Office of the R.L.A.

Increase in rent.
Defence of India Rules and Rent Restriction Act.

With the expiry of the Defence of India Act and the rules, the order made by the District Magistrate, Thana at page 21 ante h lapsed. Government may become entitled to the protection of the new Rent Restriction Act which is proposed to be passed and resist the increase of rent provided the Act is extended to Bordi.

Sd/- P.M.Lad.
1-10-1947.

Remembrancer of Legal Affairs.

U.R.to E.& I.D., No. 9684 dated the 3rd October 1947.

Submitted after issue. No index card appears necessary.

File in D ent Restriction /47

Sd/-
8-10

V.M.D./16-5
4c.

Office of the R.L.A.

The attention of H.D. is invited to R.L.A's opinion No. 9203 dated 18th December 1946. As pointed out in that opinion, it is doubtful whether Government can take advantage of the Bombay Rents, Hotel Rates and Lodging House Rates (Control) Act, 1944. Assuming that Government is entitled to the protection of that Act, it appears that the incorporation of thata condition in the present lease excluding the power of renewal after the expiry of the lease, will not prejudicially affect Government , for notwithstanding such condition Government can claim to continue in the premises under section 9(1) without asking for such renewal. But if Government agrees to the condition excluding the option to terminate the lease prematurely, Government would be bound by it.

Sd/- P.M. Lad.
26-8

Remembrancer of Legal Affairs.

U.R. to H.D. No.8700 dated the 27th August 1947.

Submitted after issue with an index card.

2. File in O Bombay Rents, Hotel Rates Act/47

Sd/- 20-10

H.D./16-8

IMMEDIATE.
Letter.

No. 30-P.

Office of the
Remembrancer of Legal Affairs,

Council Hall, Poona, 30th September 1947.

To

The Superintending Engineer,
Central Circle, Poona.

Subject:- Tea Stall in the Central Offices Building

Sir,

With reference to your endorsement No. C.91- P/5883 dated the 25th September 1947 forwarding a letter from the Executive Engineer, Poona Division, No.10045, dated the 24th September 1947, on the subject noted above, I have the honour to observe as follows:-

The view taken so far is that the Crown, not being named in the Rent Control Act expressly or by implication, is not bound by that statute. Consequently the Rent Control Act will not apply to Government premises and the lessees would not be entitled to resist eviction on the termination of the lease. This view may perhaps receive statutory ~~xxxxxx~~ recognition in the Rent Control Legislation which it proposed to enact soon.

There is however one point which requires consideration. Under clause 2 of the lease a monthly rent of Rs.245 is fixed and the period of lease is for six months from 1.4.1947 to 30-9-1947; but clause 7 provides that the tenancy of the said premises is a tenancy from month to month liable to be terminated by one month's notice on either side and under clause 9 on the termination of the lease under clause (7) or (16) the lessee agrees to vacate

and give up possession. No notice is necessary to end determine a tenancy for a fixed term (See Mulla's Transfer of Property Act, p. 649). In view of this it is difficult to reconcile clauses 2,7 and 9 particularly when there is no express provision about surrender of possession of the premises on expiry of the period of six months. The provision about the lease being from month to month is hardly consistent with that fixing the period of the lease. Since the lease expressly provides for the determination of the lease under clause 6, that is to say, by a month's notice it appears safer to terminate the lease accordingly, although the period of six months expires at the end of this month. The Executive Enginner, Poona Division should therefore take steps to give a month's notice to the lessee before the end of the month. However, in view of what is stated in the concluding part of para. 5 ofhis letter there is no objection to proceeding with the auction.

2. The papers accompanying your endorsement are enclosed.

Your obedient servant,

Sd/- P.K. Lad

30-9

Remembrancer of Legal Affairs

Submitted after issue. Index card does not appear necessary,

File in O. Rents Hotels Rates/47

Sd/-

Lease of premises for the Office of the Inspector of at Chiplun. Weights and Measures at Chiplun.

Bombay Rents, Hotel Rates and Lodging House Rates (Control Act, 1944 and The Transfer of Property Act, 1882.

It appears that since 1st April 1943, certain premises at Chiplun have been taken on lease by the Director of Industries for the office of the Inspector of Weights and Measures on an annual contract basis at monthly rent of Rs.12 In November 1946, the lessor demanded the increased rent of Rs.25 per month failing which he desired that the premises should be vacated by 31st December 1946. In reply he was informed that the lease would expire on 31st March 1947. In the meantime attempts were made to persuade the lessor to agree to a monthly rent of Rs. 18. These attempts failed and ultimately by his letter dated 21st July 1947, he has asked for vacant possession with effect from 1st September 1947. The question raised for the consideration of the R.I.A. is whether the lessor is legally competent to increase the rent or to object the lessee if vacant possession is not given to him after 31st August 1947.

The Bombay Rents, Hotel Rates and Lodging House Rates (Control) Act, 1944, does not apply to office premises nor has it been extended to Chiplun. Consequently, the lessor would be perfectly entitled to increase rent or to evict the lessee provided, of course, the lease has been legally terminated either by efflux of time or by proper notice. Under section 106 of the Transfer of property Act in the absence of a contract or local law or usage to the contrary, a lease of immoveable property for purposes other than agricultural or manufacturi purposes shall be deemed to be a lease from month to month terminable on the part of either lessor or lessee by fifteen day's notice expiring with the end of a month of the tenancy. In the present case the premises are not doubt leased for a

purpose other than agricultural or manufacturing purposes. Consequently in the absence of a contract to the contrary it would be presumed to be a lease from month to month. There appears to be no lease in writing and consequently it is very difficult to ascertain the exact terms of lease regarding its period as well as its termination. It appears from the letter of the Director of Industries at page 1 ante that the lease was taken on an annual contract basis which presumably means a lease from year to year. "A tenanny from year to year is terminable at the end of the first as x well as any subsequent year unless in creating such tenancy the parties use words showing that they contemplate a tenancy for two years at least. (See Woodfall's Law of Landlord and Tenant, 24th dn.p.219). It would therefore be possible to contend that the lease in the present case is one from year to year terminable by proper notice. The notice given by the lessor in November 1946, requiring the leasee to vacate the premises by 31st December 1946 could not be deemed to be a proper notice terminating the lease. As the lessor did not take proper steps to terminate the lease at the end of March 1947, the lessor hxx would be deemed to be renewed for another year. It is presumed that after March 1947, the lessor has received the rent for some months. If so, it implies his consent to renew the lease for a year more. In these circumstances the notice given by him in July 1947, asking for vacant possession of premises with effect from 1st September 1947, cannot have the effect of terminating the lease. However, in view of the legal position arising out of section 106 of the Transfer of Property Act, it is doubtful now the lease would be construed by the Court. If it be held to be a lease from month to month, the

notice given by the lessee in July 1947, would be a valid notice and Government will have to vacate. The new Rent Control Act which is ~~gang~~ going to be shortly passed by the Legislature will apply even to office premises and if the Act is extended to Chiplun, it would be possible for Government not only to resist eviction but also to oppose the increase of rent. Taking all these circumstances into consideration it appears desirable that Government should hold over and await the application of the new Rent Act to Chiplun.

Sd/-P.M. Lad.
10-10
Remembrancer of Legal Affairs.

U.R. to E.& I.D. No. 9003 dated the 13 th October 1947.

D. /16-5

Office of the R.L.A.

Re.leases of stalls in Municipal Market.

Bombay Rents, Hotel Rates and Lodging House Rates (Control) Act, 1944; and Bombay Municipal Boroughs Act, 1925.

It appears that the Ahmednagar Municipality has leased out certain stalls in Dane Dabra Market for storing grains etc. and also certain stalls in the Cotton Market ware-house for storing cotton bales and these stall holders claiming benefit of the Bombay Rents, Hotel Rates and Lodging House Rates (Control) Act, 1944, have refused to vacate them or to pay higher rates notwithstanding the expiry of their leases. The Municipality is of the opinion that the provisions of the Rent Control Act do not apply in such cases of stalls of Markets which are leased out under the provisions of section 48 of the Bombay Municipal Boroughs Act, 1925. The Remembrancer of Legal Affairs is requested to advise whether the view taken by the Municipality is correct and to consider the effect of decision of the Bombay High Court in the case between the Bombay Municipal Stall Holder's Association and the Bombay Corporation.

The Bombay Rents, Hotel Rates and Lodging House Rates (Control) Act,1944, applies to premises let for rent. The provisions of Part III of that Act give protection to the lessees of premises let for storage accommodation. The Act makes no distinction between premises of private landlords and those of a local authority. The stalls let to stall-holders by the Ahmednagar Municipality in the present case under section 48 of the Bombay Municipal Boroughs Act. 1925 , are premises let for storage accommodation within the meaning of Part III of the Rent Control Act. Consequently, the tenants of these stall-holders a

...ning of Part III of the Rent Control Act. Consequently, the tenants of these stall-holders are entitled to the protection of Rent Control Act. The view taken by the Municipality is not correct.

The Bombay High Court decision which H.M.(L.S.G.) appears to have in mind is the one in Criminal Revision Application No.175 of 1947. In that case the question whether the stall-holders were entitled to the protection of the ...ent Control Acts, was not raised. It may, however, be mentioned that those stall holders were not lessees but licensees under section 407 of the Bombay Municipal Act, 1888. A license is defined in section 52 of the Indian Easements Act, 1882, as right to do or continue to do, in or upon the immovable property of the grantor something which would in the absence of such right be unlawful and such right does not amount to an easement or an interest in the property. The distinction between a license and a lease is marked by the last clause of the definition for a license does not create any estate or interest in the property to which it relates (see Mulla's Transfer of Property Act, p.581). Consequently, the Rent Control Act, does not apply to premises held under a license. In the present case the stalls were leased under section 48 (1) and not granted under a license, section 90(1) and of the Bombay Municipal Boroughs Act, 1925. Consequently, these stalls would be governed by the Rent Control Act. It may, however, be added that the new ...ent Control Act has exempted premises belonging to ...ocal Authorities from its scope.

Sd/- P. M. Lad
6-11-47

Remembrancer of Legal Affairs

Exemption of Kottonai Mooljl Bhatia Nivas.

Bombay Rent Restriction Act, 1939 and Bombay Rents, Hotel Rates and Lodging House Rates Control Act, 1947.

The provision to section 2 of the Bombay Rent Restriction Act, 1939, vests Government with power to direct that all or any of the provisions of this Act shall not apply to any particular premises or class of such premises. The orders passed by Government under that proviso have not been saved by section 50 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. The exemption was from the provisions of the Act which is being repealed and cannot be construed as an exemption from the provisions of the Act which repeals it. Further sub-section (2) of section 4 of the Bombay Rents, Hotel and Lodging House Rates Control Act empowers Government to direct that all or any of the provisions of this Act shall not apply to premises used for public purposes of a charitable nature. It is apparent that the proviso to section 2 of the Bombay Rent Restriction Act, 1939, is much wider than sub-sec (2) of section 4 of the Bombay Rents, Hotel and Lodging House Rates Control Act, and consequently the orders passed under the latter cannot by virtue of section 25 of the General Clause Act, 1904, be deemed to have been continued under the former inasmuch as some of such orders might be inconsistent with the provisions of the new Act. It follows, therefore, that the exemption granted under the proviso to section 2 of the Bombay Rent Restriction Act, 1939, to Kottonai Mooljl Bhatia Nivas would not be available under the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. However, if that building is used for a public purpose of a charitable nature, it would automatically be exempt from the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. However that may be, a decree for eviction has been already obtained against the applicant, and it is saved by the proviso to section

section 50 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 and by the general operation of section 7 of the Bombay Genral Clauses Act, 1904. Consequently, the applicant would not be entitled to escape eviction.

Sd/- P. M. Lad.
13-12

Remembrancer of Legal Affairs.

U.R. to H.& L .G.D.No. 12044 dated the 15th December 1947.

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